

# JOHN D. FERRERO

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December 8, 2005

Stark County Auditor's Office  
110 Central Plaza South, Ste. 250  
Canton, Ohio 44702-1410

Attn: Kim Perez, Stark County Auditor

Re: Authority to Recycle Old Computer Equipment  
Our File No. M101.00265

Dear Mr. Perez:

I have before me your e-mail, dated September 19, 2005, asking for the opinion of this office concerning the ability of the Stark County Board of MRDD to donate old computers and printers to Assistive Technology of Ohio.

Congress passed the "Assistive Technology Act of 2004," which provides grants to states for the purpose of supporting their efforts to improve the provision of assistive technology to individuals with disabilities. Pursuant to the AT Act, the governor has designated Assistive Technology of Ohio (AT Ohio) as its implementing entity for the program in this state.

AT Ohio is a federally funded non-profit organization. One of the programs run by AT Ohio involves receiving donations of used computers and printers, which AT Ohio refurbishes and redistributes to disabled persons. This is the program in which MRDD is interested.

You have asked whether it is legal for such old computers and printers to be donated to this program.

The Ohio Attorney General has opined that when a county board of mental retardation and developmental disabilities has personal property, acquired other than by gift, grant, devise, or bequest, and such property is no longer need for public use, or is obsolete or unfit for the use for which it was acquired, the disposition of such property is governed by the procedures set forth in R.C. 307.12. (OAG 84-054).

The law is clear that a county has only the powers and duties expressly conferred upon it by statute, and those that are by implication necessary to carry out its express powers. R. C. 307.85 gives the Board of County Commissioners the authority to participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted by the U.S. Congress, **or with any such agency or organization that is receiving federal funds pursuant to a federal program.** The statute further allows for the Board to adopt any procedures and take any action not prohibited by the Ohio Constitution or Ohio law.

Thus, the county may participate in AT Ohio's program, as long as it does not conflict with Ohio laws.

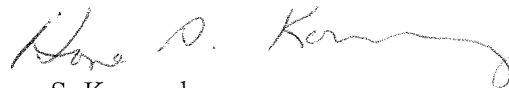
As mentioned earlier, R.C. 307.12 is the applicable law in this case. R.C. 307.12 outlines the steps to be taken regarding the sale or donation of county personal property, which includes old computers and printers. Pursuant to R.C. 307.12, when the Board of County Commissioners finds by resolution, that the county has personal property which is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and when the fair market value of the property to be sold or donated is, in the Board's opinion, \$2500.00 or less, it is given several options.

The only option which seems to apply here is outlined in R.C. 307.12(B)(2). This section addresses donation of property to an eligible nonprofit organization that is located in this state and which is exempt from federal income tax pursuant to 26 U.S.C. 501(a) and (c)(3). Eric Rathburn, AT Ohio's legislative director, has indicated that AT Ohio is located in Columbus, Ohio, and is 501(c)(3) tax exempt. Thus, the Board may donate old computers to AT Ohio under R.C. 307.12(B)(2). This process requires several steps, so I have attached a copy of the statute for your use.

If the equipment happens to be worth more than \$2500.00, they must be auctioned. However, AT Ohio would certainly be welcome to bid at the auction and could most likely purchase them at a very reasonable price.

I would be happy to discuss this issue with you, Ms. Steiner, or any members of the Board, if you have any further questions in connection with this opinion letter or the donation process. Please do not hesitate to contact me.

Sincerely,



Hope S. Konovsky  
Assistant Prosecuting Attorney  
330-451-7915

cc: Gloria Steiner, Stark MRDD  
Eric Rathburn, AT Ohio  
Jeff Dutton, Stark County Administrator

## R.C. § 307.12

Baldwin's Ohio Revised Code Annotated Currentness

Title III. Counties

❏ Chapter 307. Board of County Commissioners--Powers (Refs & Annos)

❏ Land, Buildings, and Property

**➡307.12 Sale or donation of personal property or motor vehicle of the county; lease to other subdivision; sale by sealed bid; disposal of scrap construction materials**

(A) Except as otherwise provided in divisions (D), (E), and (G) of this section, when the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, which is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and when the fair market value of the property to be sold or donated under this division is, in the opinion of the board, in excess of two thousand five hundred dollars, the board may do either of the following:

(1) Sell the property at public auction or by sealed bid to the highest bidder. Notice of the time, place, and manner of the sale shall be published in a newspaper of general circulation in the county at least ten days prior to the sale, and a typewritten or printed notice of the time, place, and manner of the sale shall be posted at least ten days before the sale in the offices of the county auditor and the board of county commissioners.

If a board conducts a sale of property by sealed bid, the form of the bid shall be as prescribed by the board, and each bid shall contain the name of the person submitting it. Bids received shall be opened and tabulated at the time stated in the notice. The property shall be sold to the highest bidder, except that the board may reject all bids and hold another sale, by public auction or sealed bid, in the manner prescribed by this section.

(2) Donate any motor vehicle that does not exceed four thousand five hundred dollars in value to a nonprofit organization exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3) for the purpose of meeting the transportation needs of participants in the Ohio works first program established under Chapter 5107. of the Revised Code and participants in the prevention, retention, and contingency program established under Chapter 5108. of the Revised Code.

(B) When the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, which is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and when the fair market value of the property to be sold or donated under this division is, in the opinion of the board, two thousand five hundred dollars or less, the board may do either of the following:

(1) Sell the property by private sale, without advertisement or public notification;

(2) Donate the property to an eligible nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3). Before donating any property under this division, the board shall adopt a resolution expressing its intent to make unneeded, obsolete, or unfit-for-use county personal property available to these organizations. The resolution shall include guidelines and procedures the board considers necessary to implement a donation program under this division and shall indicate whether the county will conduct the donation program or the board will contract with a representative to conduct it. If a representative is known when the

resolution is adopted, the resolution shall provide contact information such as the representative's name, address, and telephone number.

The resolution shall include within its procedures a requirement that any nonprofit organization desiring to obtain donated property under this division shall submit a written notice to the board or its representative. The written notice shall include evidence that the organization is a nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3); a description of the organization's primary purpose; a description of the type or types of property the organization needs; and the name, address, and telephone number of a person designated by the organization's governing board to receive donated property and to serve as its agent.

After adoption of the resolution, the board shall publish, in a newspaper of general circulation in the county, notice of its intent to donate unneeded, obsolete, or unfit-for-use county personal property to eligible nonprofit organizations. The notice shall include a summary of the information provided in the resolution and shall be published at least twice. The second and any subsequent notice shall be published not less than ten nor more than twenty days after the previous notice. A similar notice also shall be posted continually in a conspicuous place in the offices of the county auditor and the board of county commissioners, and, if the county maintains a web site on the internet, the notice shall be posted continually at that web site.

The board or its representative shall maintain a list of all nonprofit organizations that notify the board or its representative of their desire to obtain donated property under this division and that the board or its representative determines to be eligible, in accordance with the requirements set forth in this section and in the donation program's guidelines and procedures, to receive donated property.

The board or its representatives also shall maintain a list of all county personal property the board finds to be unneeded, obsolete, or unfit for use and to be available for donation under this division. The list shall be posted continually in a conspicuous location in the offices of the county auditor and the board of county commissioners, and, if the county maintains a web site on the internet, the list shall be posted continually at that web site. An item of property on the list shall be donated to the eligible nonprofit organization that first declares to the board or its representative its desire to obtain the item unless the board previously has established, by resolution, a list of eligible nonprofit organizations that shall be given priority with respect to the item's donation. Priority may be given on the basis that the purposes of a nonprofit organization have a direct relationship to specific public purposes of programs provided or administered by the board. A resolution giving priority to certain nonprofit organizations with respect to the donation of an item of property shall specify the reasons why the organizations are given that priority.

(C) Members of the board of county commissioners shall consult with the Ohio ethics commission, and comply with the provisions of Chapters 102. and 2921. of the Revised Code, with respect to any sale or donation under division (A) or (B) of this section to a nonprofit organization of which a county commissioner, any member of the county commissioner's family, or any business associate of the county commissioner is a trustee, officer, board member, or employee.

(D) Notwithstanding anything to the contrary in division (A), (B), or (E) of this section and regardless of the property's value, the board of county commissioners may sell or donate county personal property, including motor vehicles, to the federal government, the state, or any political subdivision of the state without advertisement or public notification.

(E) Notwithstanding anything to the contrary in division (A), (B), or (G) of this section and regardless

of the property's value, the board of county commissioners may sell personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, which is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, by internet auction. The board shall adopt, during each calendar year, a resolution expressing its intent to sell that property by internet auction. The resolution shall include a description of how the auctions will be conducted and shall specify the number of days for bidding on the property, which shall be no less than fifteen days, including Saturdays, Sundays, and legal holidays. The resolution shall indicate whether the county will conduct the auction or the board will contract with a representative to conduct the auction and shall establish the general terms and conditions of sale. If a representative is known when the resolution is adopted, the resolution shall provide contact information such as the representative's name, address, and telephone number.

After adoption of the resolution, the board shall publish, in a newspaper of general circulation in the county, notice of its intent to sell unneeded, obsolete, or unfit-for-use county personal property by internet auction. The notice shall include a summary of the information provided in the resolution and shall be published at least twice. The second and any subsequent notice shall be published not less than ten nor more than twenty days after the previous notice. A similar notice also shall be posted continually throughout the calendar year in a conspicuous place in the offices of the county auditor and the board of county commissioners, and, if the county maintains a web site on the internet, the notice shall be posted continually throughout the calendar year at that web site.

When property is to be sold by internet auction, the board or its representative may establish a minimum price that will be accepted for specific items and may establish any other terms and conditions for the particular sale, including requirements for pick-up or delivery, method of payment, and sales tax. This type of information shall be provided on the internet at the time of the auction and may be provided before that time upon request after the terms and conditions have been determined by the board or its representative.

(F) When a county officer or department head determines that county-owned personal property under the jurisdiction of the officer or department head, including motor vehicles, road machinery, equipment, tools, or supplies, is not of immediate need, the county officer or department head may notify the board of county commissioners, and the board may lease that personal property to any municipal corporation, township, or other political subdivision of the state. The lease shall require the county to be reimbursed under terms, conditions, and fees established by the board, or under contracts executed by the board.

(G) If the board of county commissioners finds, by resolution, that the county has vehicles, equipment, or machinery which is not needed, or is unfit for public use, and the board desires to sell the vehicles, equipment, or machinery to the person or firm from which it proposes to purchase other vehicles, equipment, or machinery, the board may offer to sell the vehicles, equipment, or machinery to that person or firm, and to have the selling price credited to the person or firm against the purchase price of other vehicles, equipment, or machinery.

(H) If the board of county commissioners advertises for bids for the sale of new vehicles, equipment, or machinery to the county, it may include in the same advertisement a notice of the willingness of the board to accept bids for the purchase of county-owned vehicles, equipment, or machinery which is obsolete or not needed for public use, and to have the amount of those bids subtracted from the selling price of the other vehicles, equipment, or machinery as a means of determining the lowest responsible bidder.

(I) If a board of county commissioners determines that county personal property is not needed for public use, or is obsolete or unfit for the use for which it was acquired, and that the property has no

value, the board may discard or salvage that property.

(J) A county engineer, in the engineer's discretion, may dispose of scrap construction materials on such terms as the engineer determines reasonable, including disposal without recovery of costs, if the total value of the materials does not exceed twenty-five thousand dollars. The engineer shall maintain records of all dispositions made under this division, including identification of the origin of the materials, the final disposition, and copies of all receipts resulting from the dispositions.

As used in division (I) of this section, "scrap construction materials" means construction materials that result from a road or bridge improvement, remain after the improvement is completed, and are not reusable. Construction material that is metal and that results from a road or bridge improvement and remains after the improvement is completed is scrap construction material only if it cannot be used in any other road or bridge improvement or other project in its current state.

(2005 H 68, eff. 6-29-05; 2004 H 323, eff. 9-23-04; 2004 H 204, eff. 11-5-04; 2001 H 226, eff. 1-25-02; 1999 H 19, eff. 10-26-99; 1997 S 62, eff. 11-5-97; 1997 H 408, eff. 10-1-97; 1984 S 215, eff. 7-4-84; 1977 S 93; 1953 H 1; GC 2447-2)

#### HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 123 v 470; 122 v S 212